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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/541,217	01/06/2006	Guy Derrieu	11016-0042	4557
22902	7590	12/17/2010	EXAMINER	
CLARK & BRODY 1700 Diagonal Road, Suite 510 Alexandria, VA 22314			PACKARD, BENJAMIN J	
			ART UNIT	PAPER NUMBER
			1612	
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			12/17/2010	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

## Application No.

10/541,217

## Applicant(s)

DERRIEU ET AL

## Examiner

Benjamin Packard

## Art Unit

1612

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 28 June 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) 18-21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17, 22 and 23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsman's Patent Drawing Review (PTO-940)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 06/28/10 has been entered.

Applicants' arguments, filed 06/28/10, have been fully considered. Rejections and/or objections not reiterated from previous office actions are hereby withdrawn. The following rejections and/or objections are either reiterated or newly applied. They constitute the complete set presently being applied to the instant application.

#### ***Claim Rejections - 35 USC § 112 - Written Description***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

**Claims 1-17, 22, and 23** are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The specification provides various embodiments which are Applicants preferred embodiments, but such disclosure does not provide support for the newly amended claim 1 which requires the object be elongated "along a longitudinal axis wherein the length of said object in the direction of said longitudinal axis is greater than the height and width of said object in respective directions transverse to said longitudinal axis..." Examiner notes Applicants have failed to point out where in the originally filed disclosure the amendment find support. As such, Examiner only able to find Applicant disclosure which teaches "One of the main characteristics of this elongated object is its shape, which includes at least two diherdrons, the two edges of which extend approximately over the entire length of the object." (instant spec pg 14 lines 20-23). Examiner also finds the Figures contain X-X axes which are described as "longitudal" by Applicants (instant specification at pg 14 lines 26-28), but such disclosure is with regards to the specific embodiments with predefined axes, not generic teaching of the dimensions of the object. The skilled artisan, when reading this disclosure, would not consider the limitation now presented as contemplated by Applicants as a limiting feature, given it is unclear what embodiments this limitation support as the longitudinal axis can vary based on the orientation of the product relative to the person viewing the project.

***Claim Rejections - 35 USC § 102***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

**Claims 1-5, 11-13, 16, 17, 22, and 23** stand rejected under 35 U.S.C. 102(a) as being anticipated by Arnold et al (US 6,360,696, see IDS dated 6/30/05).

Applicants assert Arnold does not disclose at least two dihedrons, the edges of which extend along the entire length of the object, since a star has no "length". Applicants also assert the small projections teach away from that set forth in Applicants and the changes would not have been obvious where modifying the shape set forth in the amended claims would have ruined the chew toy of Arnold. Applicants also request reconsideration that dicalcium phosphate is an active constituent as recited in claim 1 where Applicants define it as an abrasive.

Examiner disagrees. First, the new limitation requires the object be elongated "along a longitudinal axis wherein the length of said object in the direction of said longitudinal axis is greater than the height and width of said object in respective directions transverse to said longitudinal axis." Such a limitation appears to be met where the "longitudinal axis" is not defined in the instant specification and therefore may be defined as any axis on the disclosed product. Thus, when viewing the product form the front, the axis may run from the top of one star point down the middle. The result would appear to be an overall length which is slightly "taller" than it is wide and "thick", where the width would be between two points at an angle.

Second, Applicants again appear to be arguing a star is a two dimensional unit. Looking at figure 1 of Arnold, it is clear that there are points at the end of the star which form an edge, albeit a rounded edge, which extends from the front to the rear of the start, hence, along its "length".

Third, the instant rejection is based on anticipation, not obviousness, therefore Examiner is unable to respond to "obviousness" arguments where such were not relied upon to make the rejection.

Finally, Examiner still finds dicalcium phosphate is an "active constituent", even if Applicants claim it under a different label. "From the standpoint of patent law, a compound and all its properties are inseparable" see MPEP 2141.02. Thus, dicalcium phosphate is dicalcium phosphate, regardless the label given. Here, dicalcium phosphate is construed as both an active constituent and an abrasive. Such reasoning was explained in the Final Rejection mailed 12/28/09 and incorporated herein by reference, where calcium is a well known remineralizing agent which will act against dental plaque.

### ***Claim Rejections - 35 USC § 103***

**Claims 1-13, 16, 17, 22, and 23** stand rejected under 35 U.S.C. 103(a) as being unpatentable over Arnold et al (US 6,360,696, see IDS dated 6/30/05) in view of Markham et al (US 4,802,444).

With regards to claims 1-5, 11-13, 16, 17, 22, and 23, the reference is believed to be anticipatory as discussed above. For the sake of completeness of prosecution, purely arguendo and with regard to this particular ground of rejection only, however, it will be presumed that the prior art differs from the instant claims insofar as it does not specifically disclose the newly amended height to width to thickness requirement. If not, it would have been obvious to one of ordinary skill in the art to vary the shape of the

star, resulting in various related shapes, such as elongated stars or the like, so long as it results in a form with an edge that projects between teeth and gums when chewed, as desired by Markham.

Applicants assert the skilled artisan would recognize the shapes of Arnold et al and Markham et al as very different, and because the edges are not the same, would not be an obvious variation where when extended in a different direction, the edges would not fit between the teeth of a ferret.

Examiner disagrees. While the disclosed embodiments of the two patents differ, both are directed to chew toys which provide an oral care function. As discussed above, the direction of the edges varies on the direction the product is viewed. Where the pointed edges of Markham are taught to provide the hygienic effect, the skilled artisan would recognize that pointed edges, such as on the star of Arnold could likewise provide the same hygienic effect where they would be able to clean between the teeth and gums of the animal chewing the toy. Further, while Arnold et al specifically recites ferrets as a preferred animal, it is broader teaching is directed to small pets, with no limiting definition of small pets. The skilled artisan would recognize other animals, such as small dogs, could also benefit from oral care products, given Markham et al specifically teaches chew toys for dogs. Thus, not only do the two references relate due to the common problem trying to be solved, but the skilled artisan would also understand the two devices could be related to the same animal population.

**Claims 14-15** stand rejected under 35 U.S.C. 103(a) as being unpatentable over Arnold et al (US 6,360,696, see IDS dated 6/30/05) in view of Markham et al (US 4,802,444) and Rich (US 6,365,133).

Applicants assert there is clear distinction between being part of a matrix and on the matrix. As such, Applicants assert Rich teaches only a directed toothpaste formulation that is expressly coated on an outer surface of the object so a dog's saliva can re-hydrate it, and as such, essentially teaches away from dispersing the toothpaste "in" the matrix.

Examiner disagrees. First, Rich is not limited to only external coating of rawhide with dental silica. Col 3 lines 65-67 of Rich teaches "the present invention comprises an edible toothpaste incorporated into a durable dog chew made from pieces of the dries ears of domestic animals." Thus, it is expected that the application will be "incorporated" into the product, per the teaching of Rich. Note, the same term is being used by Applicants, Applicants do not define the term to require homogeneous mixing of the matrix material with the silica. As such, the term may be reasonably construed to include uses as disclosed in Rich.

Second, Examiner notes that where silica is dispersed on the outer portion of a product, the outer layer of the product in contact with the product will interact, thereby causing the two to become "incorporated". As discussed above, the instant specification does not require silica to be homogeneously mixed in the matrix, but may be present only in the outer layer of the matrix.



Finally, even in light of the first two responses, the skilled artisan would find it obvious to incorporate the silica within the artificial matrix of Arnold et al, given Arnold et al incorporates other beneficial agents. To add silica would provide extended exposure as the chew toy is chewed by the animal.

### ***Conclusion***

No claims allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Benjamin Packard whose telephone number is 571-270-3440. The examiner can normally be reached on M-R 8-5 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Frederick Krass can be reached on 571-272-0580. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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/Benjamin Packard/

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